

KOBAYASHI, SUGITA & GODA

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POST-CONFIRMATION TRUST

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;)	CIVIL NO. CV03-00385 SOM-LEK
)	(Copyright)
Plaintiff,)	
)	DECLARATION OF LEX R. SMITH;
vs.)	EXHIBITS "A" – "D"
)	
HAWAIIAN EXPRESS SERVICE,)	
INC., et al.,)	
)	
Defendants.)	
)	

DECLARATION OF LEX R. SMITH

I, LEX R. SMITH, under penalty of perjury, state as follows:

1. I am an attorney licensed to practice law before all of the State and Federal Courts in the State of Hawaii and am one of the attorneys representing Defendant POST-CONFIRMATION TRUST for Fleming Companies, Inc.

("PCT") in this case.

2. Attached hereto as Exhibit "A" is the bill of costs listing actual disbursements made by the PCT. I have reviewed and approved the time and charges set forth in the itemization of work performed, and these costs are correctly stated, were reasonable and necessarily incurred as a result of actual work performed in this matter, allowable by law, and were actually paid by and/or billed to the PCT.

3. Attached hereto as Exhibit "B" is a chart showing attorneys' fees and expenses charged by Kobayashi, Sugita & Goda to PCT in this matter. The time spent and expenses incurred were reasonable and necessary under the circumstances.

4. Attached hereto as Exhibit "C" is a chart showing nontaxable costs reasonably and necessarily incurred under the circumstances in this case.

5. Some services provided and costs incurred prior to the dismissal in June, 2005 of C&S LOGISTICS OF HAWAII, LLC, C&S WHOLESALE

GROCERS, INC., C&S ACQUISITIONS LLC; ES3, LLC, and RICHARD COHEN (“C&S”) were equally required in the representation of Fleming and C&S, so charges for attorneys’ fees, non-taxable costs and taxable costs have been divided equally. Accordingly the attached chart reflects only 50% of the total amount charged for such services.

6. I am a partner at Kobayashi, Sugita & Goda, and have been engaged in the practice of law continuously since 1983. My billing rate in this matter is \$200.00, which is below the rates I currently charge other clients.

7. Ann C. Teranishi was an associate at Kobayashi, Sugita & Goda, engaged in the practice of law continuously since 1999. Her billing rate in this matter was \$120.00.

8. Anne E. Lopez was an associate at Kobayashi, Sugita & Goda, engaged in the practice of law continuously since 2002. Her billing rate in this matter was \$120.00.

9. The above rates are below the rates normally charged in the community for similar services as they were not increased during the entire course of the Plaintiff’s lengthy copyright claims.

10. Attached hereto as Exhibit “D” is a true and correct copy of page 72 from the publication entitled “2006 Hawaii Book of Lists Volume 43, Issue 43”, published by Pacific Business News on December 23, 2005, indicating the ranges

of hourly fees for some of the law firms in Honolulu, Hawaii.

11. The rates charged by the law firm Kirkland & Ellis, LLP are commensurate with rates typically charged in this community, for specialized services of the type provided in this case.

12. J Garrett Karr is a paralegal at Kobayashi, Sugita & Goda, and has been practicing as a paralegal from 1994-1995 and continuously since 1997. His billing rate is \$70.00.

I declare under penalty of perjury that the statements made herein are true and correct to the best of my knowledge, information and belief.

DATED: Honolulu, Hawaii, March 23, 2006.

A handwritten signature in black ink, appearing to read 'Lex R. Smith', is written over a horizontal line.

LEX R. SMITH